In the Supreme Court

OF THE

United States

OCTOBER TERM, 1926.

No. 306

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by Sea on Vessels flying the flag of and engaged in the Merchant Service of the United States of America, and sailing to and from Ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

} In Equity

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

The opinion under review herein is reported as follows:

Anderson v. Shipowners Ass'n. et al., 10 Fed. Rep. (2nd) 96,

and is also found at (R. 43), and the short opinion of the United States District Court herein, not reported, is to be found at (R. 21).

The date of the judgment to be reviewed is January 18th, 1926 (R. 47).

The judgment became final on February 17th, 1926, under the following parts of Rule 32 of the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

> " * * * Such mandate, if not stayed by the order or the Court, shall be issued on the expiration of thirty days from the date of such final determination, unless within said time a petition for rehearing be filed, in which case the mandate shall be stayed until five days after the determination of such petition."

An order staying the issuance of the mandate was made by that Court and the petition for certiorari was filed in this Court on March 1st, 1926.

SPECIFIC CLAIMS ADVANCED, AND RULINGS MADE, IN THE LOWER COURT WHICH ARE RELIED UPON AS THE BASIS OF THIS COURT'S JURISDICTION.

The opinion of the United States District Court herein can be found at (R. 21) and reads:

> "In this case I am bound by the decisions of the Supreme Court of the United States, in Street v. Shipowners Association, 263 U. S. 334, and the decision of the Court of Appeals for this Circuit in Street v. Shipowners Association, 299 Fed. 5 and Tillbury v. Oregon Stevedoring Company, filed August 3, 1925, and not yet reported."

(The *Tillbury* case is now reported in 7 Fed. (2nd) 1.)

The rulings of the Court hereafter referred to are, therefore, the rulings of the United States Circuit Court of Appeals for the Ninth Circuit.

(1) Petitioner claims that on a motion to dismiss, the allegations of the complaint are admitted to be true.

(2) Petitioner further claims that respondents have combined together for the purpose of and have created a monopoly inhibited by the anti-trust laws of the United States, which monopoly affects a whole industry and the restraint thereon, therefore, must necessarily be complete, and it has complete control of all merchant vessels of the United States engaged in interstate and foreign commerce plying to and from Pacific Coast ports of the United States and the engagement and discharge of seamen employed thereon, the purpose of which monopoly is alleged to be, to restrain the freedom of all seamen on the said Pacific Coast in engaging in interstate and foreign commerce (R. 11), that the allegations of the complaint show that such monopoly is co-extensive with all of such commerce and the vessels engaged therein, hence extends wherever such vessels go, which is interstate on the Pacific Coast, to the Eastern Coast of the United States and all over the world, and that such restraint is direct and a seaman cannot get work without yielding to the rules respondents have promulgated (R. 6).

The only ruling of the learned Circuit Court of Appeals thereon is the following (R. 45), in which it erroneously holds that such purpose was not alleged, but impliedly admitted that an impediment existed, erroneously holding however that it was but indirect and incidental, it saying (R. 45):

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate and foreign commerce. It is contended that less capable men are employed on vessels than would be employed if the officers of the vessels looked after the employment of seamen. This result is alleged to follow from defendant's practice of employing seamen in the order in which they apply for work. This is at most an indirect and incidental impediment to the transaction of interstate commerce. The conduct complained of falls without the inhibitions of the Sherman Act, the Clayton Act, and the federal anti-trust acts generally. Street v. Shipowners Association, 299 F. 5; Tillbury v. Oregon Stevedoring Co., Inc., 7 F. (2nd) 1. * * *"

The *Tillbury* case was a stevedore's case confined to Portland, Ore., and in which there was no legislation of Congress regulating employment as in the case of seamen, and the *Street* case does not seem to touch upon restraint on interstate and foreign commerce at all.

(3) Petitioners also claim that the allegation of the purpose of a combination would be but the conclusion of the pleader that would not add anything to the force of the pleading, and that it is the duty of a Court to apply any law that covers the facts alleged in a complaint whether the law or a purpose to violate the law is mentioned or not.

The learned Circuit Court of Appeals, however, found in effect that it was necessary to allege that the purpose of respondents' monopoly and combination was the restraint of interstate or foreign commerce (R. 45).

The last previous expression of the said Court upon the same subject was on October 19th, 1925. In the case of *Luckenbach S. S. Co. v. Campbell,* 8 Fed. (2nd) 223, 224, in which it said:

> "There seems to be some contention that no reference was made in the libel to any statute, but this is wholly unnecessary. The pleader must plead his facts, and, when he does so, he may invoke the protection of the common law, or of any applicable statute."

(4) Petitioners also claim and it is alleged (R. 3, 4, 16) that in the exercise of the monopoly arising from respondents' combination, respondents enforce rules created by themselves that are regulations of commerce, that directly restrain the right of all seamen to freely engage in interstate and foreign commerce.

The Circuit Court of Appeals conceded respondents' practices, but erroneously held that they fell without the inhibitions of the Sherman Act, the Clayton Act, and the federal anti-trust laws generally (R. 45).

(5) Petitioner also claims that interstate and foreign commerce commences with the initial transaction, in this case the registration of seamen's names in respondents' office (R. 4, 5), and that when Congress has legislated that such registration shall be done at the office of the shipping commissioner, registration

there is exclusive and additional registration in respondents' office is a direct restraint, on the right to engage in the commerce involved herein (R. 5, 11).

The learned Circuit Court of Appeals held (R. 46) that such registration in respondents' office was but preliminary to the execution of the form of the contract required by the statute, and failed to rule on anything else, although its language impliedly concedes that being preliminary to the execution of the contract, it is necessarily a part of such contract.

(6) Petitioner claims that by its terms the shipping commissioner's act is exclusive in all matters that it embraces, and would be exclusive without a direct provision to that effect.

The learned Circuit Court of Appeals, however, adopted the rulings in *Street v. Shipowners Ass'n. of the Pacific Coast,* 299 Fed. 5, in which it is held on page 9 that the Shipping Commissioner's Act is not exclusive, saying:

> "We agree with the court below that the service of the shipping commissioner under the Shipping Commissioner's Act 'is not exclusive'. Such bureaus may be maintained by either seamen or employers independently, and may render material assistance without impinging on either the letter or the spirit of the statute."

(7) Petitioner also claims that the requirement of respondents that seamen take turns for employment according to registered number (R. 5) destroys freedom of contract and the natural right of all seamen sailing on American merchant vessels, sailing to and from the Pacific Coast (R. 11, 12), as follows:

(a) To select his own place of abode, as seamen live where they work.

(b) To determine for himself what employer he will work for.

(c) To determine what officers he will work under.

(d) To determine who he will live and associate with.

(e) To select the trade in which he shall be employed.

(f) To select the ship on which he shall be employed.

(g) To take employment satisfactory to him.

(h) That it also destroys the incentive for improvement in the calling (R. 12).

The learned Circuit Court of Appeals passed upon that claim in the *Street* case (supra) and held that taking of turns obtained in the following instances:

The registration of voters;

Taking of turns at post offices;

Theaters;

Bread lines.

We claim those matters are not analogous. Bread lines are so infrequent that the comparison is without merit, and as to the other matters, each is optional, and it is always within the power of a person to find a theater, place for registration or post office where he does not have to stand in line, and there is no analogy, if otherwise, with the compulsory taking of turns to obtain the necessities of life.

(8) Petitioner also claims that respondents' rules and such taking of turns is destructive of the right given by the law to the master of a vessel to select the crew of his vessel.

And is also destructive of the right of officers of vessels to have a voice in the selection of those upon whom they have to depend to carry on the work of the vessel (R. 15).

(9) Petitioner also claims that the whole of respondents' scheme and rules are a surrender by the shipowner of his duty to do as follows:

(a) Compete with other shipowners in the selection of his own employees.

(b) Carry on his business according to his own judgment and discretion.

Those matters were not passed upon by the Circuit Court of Appeals.

(10) Petitioner also claims that the making up of records of a man's character by respondents, who neither employ or pay him, is an invasion of natural rights (R. 9).

That matter was not passed on by the lower Court.

(11) Petitioner also claims that all of respondents' rules are regulations of commerce, and Congress has made all the statutory rules relating to seamen that are necessary (R. 11). That point was not passed upon by the lower Court.

(12) Petitioner also claims that respondents' rules destroy seamen's natural rights to freedom of con-

tract on the matters we have hereinbefore specifically stated.

That was not passed upon by the lower Court.

(13) Petitioner also claims that the District Court of the United States had jurisdiction of his case, irrespective of the amount involved. The lower Court, however, held that it had not (R. 44, 46).

(14) Petitioner claims that respondents' combination is a monopoly, and the complaint shows that it is (R. 11) and that all monopolies are prohibited by the anti-trust laws.

(15) Petitioner also claims that the rules of the respondents requires seamen to do more than the law requires of them to obtain employment, and in that respect are a complete restraint and violate the natural rights of the seamen.

That was not passed upon by the lower Court.

(16) Petitioner also claims that the regulations provided by Congress for the supplying and engagement of seamen, were made for the protection of interstate and foreign commerce, and that it would be dangerous to permit associations of individuals to promulgate additional rules.

(17) Petitioner also claims respondents' arbitrary rule that no seaman can be employed on any vessel without he has a card issued by respondents, as shown (R. 10), is an unwarranted interference in the right of carrying on business, as is also the fixing of wages by respondents, who neither employ nor pay the seamen.

The lower Court did not pass upon either of those matters.

(18) Petitioner also claims that the continuous discharge book (R. 6, 7, 11) violates the provisions of the Acts of Congress that has legislated upon the same matter, and is a convenient system for blacklisting, as the master of the vessel can write anything he pleases in said book, and the seaman has no redress; while on the other hand Congress has made the shipping commissioner an arbitrator of differences between seamen and shipmasters (R. 12).

The lower Court did not pass upon that matter.

(19) Petitioner also claims that seamen are as much an instrumentality of commerce as the vessels, and that if the whole of the seamen as such an instrumentality are restrained, necessarily the whole of commerce is restrained.

That was not passed upon by the lower Court excepting as hereinbefore shown.

(20) Petitioner also claims that the fact that he obtained employment and lost the same by reason of respondents' monopoly and the rules they enforce thereunder, his individual needs show he was entitled to an injunction herein, and that the following language in the *Street* case (299 Fed. 5, 9), quoted from *McCabe v. Atchison, Topeka & Santa Fe Ry. Co.*, 235 U. S. 151, is not applicable.

> "The desire to obtain a sweeping injunction cannot be accepted as a substitute for compliance with the general rule that the complainant must present facts sufficient to show that his individual need requires the remedy for which he asks."

(21) Petitioner also claims that society requiring every person to provide himself with the necessities of life, it is the duty of society to protect such person in doing so, and that whenever any association of persons require the whole of the persons engaged in any calling to do more than the law requires them to do in obtaining such necessities as hereinbefore shown, that that is a direct and immediate restraint, and if interstate and foreign commerce is concerned, it is a direct and complete restraint upon such commerce, especially when enforced through a monopoly such as respondents have.

That was not passed upon by the lower Court excepting as hereinbefore shown.

(22) Petitioner also claims that the rules of respondents violate Section 8 of Article I of the Constitution of the United States (R. 24). The ruling of the learned Circuit Court of Appeals thereon depends upon the proper construction of the *Street* case, 263 U. S. 334. We claim that the most that case decided was that the constitutional questions were not sufficient to give this Court jurisdiction on a direct appeal.

(23) Petitioner also claims (R. 25, 26) that respondents' rules interfered with the right of petitioner to sell his labor to his own best advantage, and are therefore an interference with his property right to so dispose of his labor.

(24) Petitioner also claims, that interstate and foreign commerce on the Pacific Coast of the United States and seamen engaged therein are subjected to

respondents' rules, which rules are against public policy, therefore there must be a complete restraint, and such restraint must be within the anti-trust laws.

The lower Court did not pass upon that point.

Petitioner relies on each of his assignments of error to the decree in the United States District Court (22-29), which read as follows:

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Plaintiff designates and files the following assignment of errors upon which he will rely in the prosecution of his appeal in the above-entitled cause from the final decree given and made by the above-entitled court on the 27th day of August, 1925, in the above cause.

That the District Court of the United States, for the Southern Division, Northern District of California, Third Division, in giving its opinion and rendering its final decree of August 27th, 1925, erred as follows:

1. In finding and deciding that it, said Court, was bound by the decision of the Supreme Court, of the United States in the case of *Street v. Shipowners Association, et al.*, 263 U. S. 334, for the reason that all that was decided in said decision was, that an appeal therein could not be taken direct to the Supreme Court of the United States in that case.

2. In finding and deciding that it, said Court, was bound by the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case

of *Street v. Shipowners Association, et al.,* 299 Fed. 5, for the reason, that in the within case it appears, that plaintiff herein made demand on the defendants for registration and employment and was refused, and also obtained employment and suffered loss, by the loss of such employment, because he had not complied with defendants' rules, both of which state of fact were absent in the said case in which Alfred Street was plaintiff.

3. In finding and deciding that it, said Court, was bound by the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of *Tillbury v. Shipowners Association, et al.,* decided by that Court on the 3d day of August, 1925, for the reason, that none of the navigation laws of the United States relating to seamen were involved in that case, nor was the manning or navigation of vessels, but it related to the employment of stevedores alone.

4. In not finding and deciding that defendants' rules and regulations complained of in the complaint herein unlawfully interfered with the right of plaintiff, and all other seamen mentioned, to freedom of contract in obtaining employment.

5. In not finding and deciding that the policy of the United States as expressed by the acts of Congress as to the employment and discharge of seamen was exclusive.

6. In not finding and deciding that the rules of the defendants complained of herein, interfered with the right of each of its members, and their masters and/or mates of vessels to select their own employees.

7. In not finding and deciding that the complained of rules and regulations of defendants in the discharge of seamen, were regulations of interstate and foreign commerce, and therefore violated the provisions of Section 8 of Article I of the Constitution of the *United in* that such rules and regulations were within the exclusive power of Congress to make.

8. In not finding and deciding that defendants are in the business of supplying seamen in interstate and foreign commerce, and are thereby violating the provisions of Sections 4514 and 4515 of the Revised Statutes of the United States.

9. In not finding and deciding that the rules complained of in the complaint herein violated the provisions of Section 4508 of the Revised Statutes of the United States, and that the provisions of said section are exclusive as to the things therein required to be done by a United States Shipping Commissioner.

10. In not finding and deciding that the certificate of discharge containing the "character, conduct and qualifications" of seamen provided for in Section 4553 of the Revised Statutes of the United States, and the provisions of said section are exclusive, and that the continuous discharge book provided for by defendants' rules and regulations, and the report of the master on each seaman to defendants violate the provisions of said Section 4515 of the said Revised Statutes.

11. In not finding and deciding that the duties of a United States Shipping Commissioner as provided by the Revised Statutes of the United States in rela-

tion to the shipment, supplying and discharge of seamen are exclusive.

12. In not finding and deciding that the provisions of Sections 4507 and 4508 of the Revised Statutes of the United States, each provide the exclusive manner in which the acts mentioned in each of said sections shall be performed.

13. In not finding and deciding that the rules prescribed by defendant, and each thereof, the complying with which by plaintiff were necessary to enable him to sell his labor and engage in interstate and foreign commerce, interfered with plaintiff's right to dispose of his labor to his own best advantage, and thereby interfered with his property right to so dispose of his labor.

14. In not finding and deciding that each and the whole of defendants' rules complained of in the complaint herein, restrained plaintiff and all other seamen from fr ely engaging in interstate and foreign commerce.

15. In not finding and deciding that when the whole of one of the instrumentalities through which interstate and foreign commerce by sea is carried on was restrained, that the whole of such commerce is restrained.

16. In not finding and deciding that plaintiff could not be required to do more than the law required him to do in order to sell his labor and engage in interstate and foreign commerce by sea.

17. In not finding and deciding that the rules of defendants complained of in the complaint herein, and

their enforcement, deprived plaintiff of his property right to sell his labor without lawful authority, and *were the* taking of property without due process of law.

18. In not finding and deciding that the complained of rules of defendants mentioned in the complaint herein violated the spirit of the Constitution of the United States, as expressed in the following language contained in the preamble thereto, to wit:

> "In order to * * * promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

19. In not finding and deciding that the complained of rules of defendants violated Amendment IX of the Constitution of the United States, which reads:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

20. In granting the motion of each of the defendants to dismiss plaintiff's complaint herein.

21. In rendering a decree dismissing plaintiff's complaint herein.

22. In granting each of the grounds of the motion of the defendants to dismiss plaintiff's complaint.

23. In deciding that plaintiff's complaint did not set forth facts sufficient to constitute a cause of action as to either of the defendants or both of them.

24. In deciding that plaintiff's complaint was without equity.

25. In deciding that plaintiff's complaint did not set forth facts sufficient to entitle plaintiff to any relief.

26. In deciding that it was without jurisdiction of plaintiff's action.

29. In not finding and deciding that defendants' rules complained of violated the provisions of the Constitution of the United States.

30. In not finding and deciding that when defendant deprived plaintiff of his employment on the "Caddopeak" they interfered with his right to engage in interstate commerce.

31. In not finding and deciding that each of the acts of the defendants as complained of in plaintiff's complaint were violative of the provisions of the anti-trust laws of the United States, to wit, the act commonly known as the Sherman Act, and the act commonly called the Clayton Act.

32. In not finding and deciding that each of the acts of the defendants complained of in plaintiff's complaint violated each of the acts mentioned in the last paragraph hereof, in that they restrained interstate and foreign commerce by sea.

33. In not finding and deciding that Congress has supplied all the rules and regulations that can be supplied in the supplying, engaging and discharging of seamen in interstate and foreign commerce.

34. In not finding and deciding that a seaman engaged in interstate and foreign commerce on American Merchant vessels has a right common to all other

employees of selecting his own employer, his own trade, and his own place of employment, excepting only under such rules and regulations, as Congress may prescribe.

35. In not finding and deciding that the taking of turns for employment was bound to reduce the standard of efficiency of those compelled to comply therewith.

36. In not finding and deciding that plaintiff and all other seamen engaged in interstate and foreign commerce, had a right to engage therein without taking his turn for employment and without being subservient to the prior demands of anyone, excepting only as a prospective employer might desire to employ him.

37. In not finding and deciding that *that* defendants associations were combinations in restraint of trade, and abridged the rights of plaintiff and all other seamen employed in interstate and foreign commerce by sea as American seamen, and therefore are unlawful.

STATEMENT OF FACTS.

The complaint shows that petitioner is an alien American seaman, and is associated together with about ten thousand other seamen who ship on American merchant vessels, all of whom are affected by the acts of the respondents that it is sought to restrain herein, and he sues on behalf of himself and all of such seamen.

That the respondents either own, operate or control every vessel flying the flag of and engaged in the merchant service of the United States plying to and from ports on the Pacific Coast of the United States and engaged in interstate and foreign commerce (R. 3, 4).

That respondents have associated together to restrain the freedom of all seamen engaged in that trade, have offices in which they compel such seamen to register their names, take turns for employment, which prevents seamen well known from obtaining employment at once, and they also compel all seamen to carry a discharge book on which is printed, among other things:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this certificate and discharge" * * * (R. 4, 5, 6, 7).

That respondents further issue instructions to masters of vessels that when a seaman joins such vessel he will have the said continuous discharge book, and a card assigning him to the vessel, to take up the book and return it to the seaman when he severs his connection with the vessel with his rating, conduct, etc., and return the book to the seaman (R. 7).

Respondents also have printed in the book instructions to the seaman that when he leaves his vessel he must go to their office and get a new registered number (R. 7).

That respondents assign all seamen to vessels and give them an assignment card and the seaman so

assigned carries a card to the master of the vessel who must fill it out and return it to respondents' office when the seaman's service ends (R. 8, 9).

Respondents further instruct masters of vessels that no seaman must be employed without an assignment card issued by them designating the position to which respondents have assigned him (R. 10).

That seamen are required to have certain matters of personal description written on his discharge book, such as his place of birth, etc., and also his photograph, the latter not being insisted on, however (R. 10, 11).

That all of such matters are regulations of commerce in violation of the commerce clause of the Constitution, and have been fully provided for by Congress, in so far as Congress thought it necessary to provide for them (R. 11).

That no seaman can get employment on any of said vessels which are in excess of 300 and comprise nearly all of the vessels engaged in such trade and commerce without obeying respondents rules (R. 11).

That such rules destroy the seaman's freedom of contract, his right to select his ship, trade and employer, and make him subservient to the will of the employees of respondents who neither employ nor pay him (R. 11, 12).

That the taking of turns for employment is humiliating, destructive of competition and stifles the desire for improvement (R. 12).

That a large number of seamen have left the calling on account of such rules (R. 12).

That a seaman can readily be blacklisted as he has nothing to say about it, and no appeal from what is written on his discharge book as to his character, and it also follows that the same thing applies as to the card "Grey in Color" as he never sees that after it is delivered to the master of the vessel (R. 12).

That the whole scheme makes a seaman entirely subservient to the will of respondents who neither employ or pay him (R. 12).

That on June 15th, 1925, petitioner applied for work at respondents office in San Francisco, and was refused registration or a number for employment without a discharge book (R. 12, 13).

That he thereupon looked for and obtained work as a seaman on a vessel called the "Caddopeak" on a voyage that embraced the State of Washington, and was given a request by the mate of that vessel to respondents that petitioner be sent to that vessel, that upon presenting that request to respondents, respondents refused to send petitioner to the vessel saying they had too many men around their office now and that petitioner could not be employed on the "Caddopeak" at all (R. 13).

That petitioner met the said mate the same day and was told by him to report on board of the vessel at 1 P. M., for work which petitioner did, but the mate was told by the representative of the vessel that petitioner could not be employed on the vessel excepting through respondents' office, and petitioner lost the employment (R. 13, 14).

That petitioner would have earned $135.00 in said employment.

That respondents fix the wages paid and working conditions arbitrarily (R. 15).

That prior to the adoption of respondents rules, mates always engaged sailors as he worked them on the vessel (R. 14, 15).

That different kinds of men are required in different trades, some make short, some long voyages, but a seaman must take the vessel his turn calls for or lose his turn, and officers of vessels are deprived of the right to select the men most suitable for the trade they are engaged in, and respondents rules restrain the right of all seamen to freely engage in interstate and foreign commerce (R. 16).

ARGUMENT.

I.

RESPONDENTS HAVE A MONOPOLY THAT DIRECTLY RESTRAINS THE FREEDOM OF EVERY SEAMAN FROM ENGAGING IN INTERSTATE AND FOREIGN COMMERCE WITHIN THE TERRITORY WHERE THE MONOPOLY OPERATES.

We have no doubt respondents will rely on the case of *Industrial Association v. United States*, 268 U. S. 64. As we read that case, all that this Court decided therein, was that whatever restraint there was, was too insignificant for the Court to consider, and applied the legal maxim of *de minimus non curat lex*, saying on page 84:

> "To extend a statute intended to reach and suppress real interference with the free flow of commerce among the states, to a situation so equivocal and so lacking in substance, would be to cast doubt upon the serious purpose with which it was framed."

We understand the law to be, that any person so desiring, has a right to engage in interstate and foreign commerce, either in person or by using his property therein, whether in the case of physical property or labor, it is still property, and any interference with such rights is a restraint, here the interference is general and complete over the whole of the industry and one instrumentality of commerce.

In the concurring opinion of Mr. Justice Field, in *Butchers Union v. Crescent City Co.*, 111 U. S. he says on page 755:

> "A monopoly is defined 'to be an institution or allowance from the sovereign power of the State, by grant, commission or otherwise, to any person or corporation for the sole buying, selling, working or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before or hindered in their lawful trade'. All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain person from getting an honest livelihood, and put it in the power of the grantee to enhance the price of the commodity.
>
> "They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment."

We respectfully submit that the monopoly in this case is within a great deal of the above language, the restraint of the freedom and liberty that seamen had before is present and they are hindered in the pursuit of their lawful trade, and employment, if the sovereign power cannot create such a monopoly, certainly an association of individuals cannot.

Speaking of personal liberty and the right to make contracts to acquire property this Court said in

Coppage v. Kansas, 236 U. S. 1, 14:

> "Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich, for the vast majority of persons have no other honest way to begin to acquire property, save by working for money. * * *"

In

Adair v. United States, 208 U. S. 161, 172,

this Court said, speaking of personal liberty:

> "Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor."

An impairment of such rights must be a restraint.

The Sherman Act contains several sections, Sec. 1 deals with restraints of trade, Sec. 2, Act of July 2nd, 1890, ch. 647, 26 Stat., p. 209, deals with monopolies and reads:

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

A monopoly implies complete control, which respondents assume herein, and this Court has said as follows, on the illegality of such absolute control:

Standard Oil Co. v. United States, 221 U. S. 1.

In that case a number of corporations engaged in the oil industry had combined, a certain portion of territory was assigned to each, all others were excluded, just as all of respondents members are excluded herein, and this Court said, page 77:

"and the trade in each district in oil was turned over to a designated corporation within the combination and all others were excluded, all lead the mind up to a conviction of a purpose and intent we think as practically to cause the subject not to be within the domain of reasonable contention."

United Leather Workers v. Herbert, 265 U. S. 457, 471:

"It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would be purchasers, that the unlaw-

ful interference with its manufacture can be said directly to burden interstate commerce,"

Coronado Co. v. U. M. Workers, 268 U. S. 295, 310.

"But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets their action is a direct violation of the Anti-Trust Act."

The supply is controlled in this case.

Respondents herein do not conceal their intent, on the contrary they expressly state (Tr. p. 6):

"and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

They also tell masters of vessels that they cannot employ a seaman except through them.

The complaint alleges, paragraph VIII, page 5:

"That as a condition of being employed in such trade and commerce on vessels flying the American flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number, and no seaman can secure employment as aforesaid on the said Pacific Coast unless he takes such number and his turn for employment according to such number."

A more complete monopoly cannot be imagined.

An analogous state of facts arose in the case of

Marienelli v. United Booking Offices of America, 227 Fed. 165,

and the learned District Court says on pages 170, 171:

"There remains the final question as to whether the combination is in restraint of trade. The allegations show that the purpose of the defendant was to exclude from the two circuits any performer who would not deal exclusively with them, any theatre which employed any other booking agent or performer, and any performer's agent who dealt with outsiders. Not every contract which destroys a competition, theretofore existing, is within the act; *but those are which put a market into one hand.* Standard Oil Co. v. United States, 221 U. S. 1, 31 Sup. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 843, Ann. Cas. 1912 D. 734. It is the effort to secure control over prices by a control over supply which counts. No doubt 'market' is a vague word; a combination may control within such narrow limits that new supplies are available at trivial advances; perhaps such combinations do not 'prejudice the public interests.' Nash v. United States, 229 U. S. 373, 376, 33 Sup. Ct. 780, 57 L. Ed. 1232. If the combination does not control enough of the supply to fix prices at all, it cannot be an unreasonable restraint of trade prejudicial to the public. In the case at bar the allegations show that the defendants are trying to keep all 'first class' performers for their own theatres, refusing to allow them to act, if they act elsewhere, refusing to allow theatres to have the circuits performers if they take others, refusing to deal with any performers' agents who book them elsewhere. Article XIX of the complaint alleges that 'first class' performers cannot obtain sufficient employment in the United States and Canada outside the two circuits to make a living. The necessary inference is that the defendants, if successful, will control all 'first class' performers and succeed in monopolizing the supply. This, in turn, enables them to control the whole business, and constitutes the very conditions which the Sherman Act means to prevent. If in the execution of that project they injure the plaintiff, the resulting damages are within the seventh section of that act."

That case is cited approvingly in,

Motion Picture Patents Co. v. Universal Film Company, 235 Fed. 398, 407;

United Shoe Machinery Co. v. Sullivan & Associated Billposters & Distributers Union of United States, 234 Fed. 127, 144;

United Leather Workers International Union, et al. v. Herkert Meisel Trunk Co. et al., 284 Fed. 446, 449.

The latter case holding as follows:

> "It is the established rule that interstate commerce includes 'every initiation, negotiation and intervening act of the parties to that trade or deal from the time the intercourse relative to it commences until the transportation and delivery have been completed'." (Many cases cited.)

The language of that decision is peculiarly applicable to this case. A monopoly existed, it affected wage earners and was held illegal, and no Act of Congress legislating upon the business was present as in this case. We have a monopoly here, but the law has prescribed what a seaman shall do in order to engage in interstate commerce. To require him to do more than that must be a restraint on his freedom to so engage and the whole of the seamen are affected. We will now respectfully call the Court's attention to the common law on the subject.

II.

THE ABSOLUTE RIGHTS OF MEMBERS OF SOCIETY.

In the development of society an implied agreement has arisen between it and its members. The latter surrender certain of their natural rights by living in society and on the othe hand society guarantees to its members certain others, what are called absolute rights, of which no better explanation can be found than that in *Blackstone's Commentaries* (Sharswood), Vol. I, page 139:

> "The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land * * *."

As we will hereafter show, a man's right to sell his labor is property, and every man has a property right in his labor, hence he is entitled to what appears in the above quotation as the "free use" thereof.

Society recognizes the absolute right and expects that each of its members will exercise his powers under it and at least provide himself with necessities of life. In fact demands that he should do so, and on the other hand agrees to protect its members while acting within the law in selling his labor just as much as in selling any other class of property. We find that also well explained on page 124 of the above book of Blackstone, where it is said:

> "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance

> and intercourse which is gained by the institution of friendly hand social communities. Hence it follows that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals * * *."

There is another absolute right defined by Blackstone, as "The right of personal liberty." Of that he says (Sharswood's Blackstone's Commentaries, Vol. I, page 134):

> "This personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law * * *."

That principle is reflected in the XIII Amendment to the Constitution, which reads:

> "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation."

It is the natural right of all mankind to select his own situs, and move his person to whatever place he pleases, and restraint upon that in providing himself with necessities and thus performing a duty that he owes to society and that society requires him to perform, is involuntary servitude. Seamen are forced to work, commerce requires their services, and respondents' rules compel each seaman to go where they dictate or leave their calling, or become burdens upon society. There is sufficient in respondents' rules to

create involuntary servitude. A seaman may not wish to work on the particular vessel he is sent to; he may not like the voyage or the officers; still he must accept the employment with the alternative of the foregoing penalties. Physical force is not essential to create involuntary servitude. An economic force such as here exists, however, is just as potent as physical force.

And to enforce the above matters, respondents use their monopoly.

Our law being inherited from England, we naturally find the same methods of protection in both laws. For instance: respondents have a monopoly of about all the steamers in the trade in question; monopolies were condemned at common law and about the same system of suppressing them and protecting members of society against them are found in the laws of England as in this country. We can almost say that we borrowed the English statutes in those particulars, as follows:

The first English statute on Monopolies is that of 21 Jac. 1, 3, enacted in 1623, entitled:

> "An act concerning monopolies and dispensations with penal laws and the forfeitures thereof."

And reads in part:

> "That all monopolies, and all commissions, grants, licenses, charters * * * for the sole buying, selling, making, working or using of anything within this realm * * * are altogether contrary to the laws of this realm and so are and shall be utterly void and of no effect, and in no wise to be put in use or execution. * * *"

That statute then provides that actions for violations shall be tried "according to the common laws of the realm" and

> "wherein all and every such person and persons which shall be hindered, grieved, disturbed or disquieted, * * * shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed or disquieted, * * * and double costs."

It would almost seem as if our own anti-monopoly acts were copied from that law, and if a combination, or monopoly was void under the above law, it follows it must be void under our laws. And we have such an unlawful combination described in the case of *Hilton v. Eckersley,* 6 Ellis & Blackburn 47. Where employers had entered into a combination to allow a central body to control the matter of their workmen and it was held that the employers had put themselves into a situation of restraint, and the combination was therefore unlawful. The case was first heard in the Queen's Bench, which held that the combination was unlawful. It then went to the Exchequer Chamber, and Lord Alderson delivered the judgment of the Court, which is found on pages 73-76 of the above report, as follows:

> "This was an action by which the plaintiff sought to enforce a bond against the defendant. The condition of the bond recited that the defendant and seventeen other obligors, being respectively owners and occupiers of mills and other premises in Wigan and the neighborhood, carried on their business of spinners and weavers of cotton yarn and cloth, and employed many work-

people and servants: and that certain societies or combinations subsisted in the neighborhood amongst divers persons, whereby persons willing to be employed were deterred by a reasonable fear of social persecution and other injuries from hiring themselves to work at the said establishments; and that thereby the legal control of the obligors over their property and establishments was injuriously interfered with; and that these combinations were sustained by funds arbitrarily levied and extracted from the workmen employed by the obligors and receiving wages from them; and that it was necessary to take measures for vindicating their legal rights to the control and management of their own property, which would best sustain the rights of the labourer to the freer disposal of his skill and industry: and that to effect this, the obligors had agreed to carry on their works in regard to the amount of wages to the labourer to be employed therein, *and the times and periods of the engagements of workpeople*, and the hours of work, and the suspending of work, *and the general discipline of their* works and establishments (in conformity to law) for the period of twelve months from the date of the bond, *in conformity with the resolutions of a majority of the said obligors present at any meeting to be convened as therein mentioned;* and that, for that purpose they had entered into the bond; and the condition of the bond was therein stated to be that, if the several obligors and their partners should so carry on their works for twelve months in conformity with the resolutions of such majority, the bond as to 500l., in which each was to be bound, should be void: otherwise to be in full effect. The plea concluded with an averment that, save as aforesaid, there was no consideration for execution of the bond by defendant; *and that the bond was in restraint of trade,* and illegal and void. To this plea there was a demurrer. And, on its being argued before the Judges of the Court of Queen's Bench, the majority of that

Court gave judgment in favor of the plea. We are of the opinion that the judgment was right, and ought to be affirmed.

The question is, whether this is a bond in restraint of trade: and we think it is so. Prima facie, it is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice. If the law has in any manner regulated or restrained his mode of doing this, the law must be obeyed. *But no power short of the general law ought to restrain his free discretion. Now here the obligors to this bond have clearly put themselves into a situation of restraint.*

First: Each of them is prevented from paying any amount of wages except such as the majority may fix, whatever may be the circumstances of the work to be done and his own opinion thereon. Secondly, they can only employ persons for such times and periods as the majority may fix on, however much the minority may deem it for their own interests to do otherwise. The hours of work, the suspending of work, partially or altogether, the discipline and management of their establishments, is to be regulated by others forming a majority and taken from every individual member. And all this for a fixed period of twelve months. All these are surely regulations restraining each man's power of carrying on his trade according to his discretion, for his own best advantage, *and therefore are restraints on trade not capable of being legally enforced.*

We do not mean to say that they are illegal, in the sense of being criminal and punishable. The case does not require us; and we think we ought not to express any opinion on that point.

But then it is said that these regulations, otherwise illegal, are prevented from being so considered by the circumstances against which they

were intended to operate. It appears that a counter combination existed on the part of certain workmen, and that the alleged object of this bond was to counteract this, and to set the willing and industrious workmen free from its powers. But, supposing this to be the object, and that we may even consider it as laudable, we cannot agree that it is laudable or right to use such means of counteraction. The maxim *injuria non excusat injuriam* is a sound one, both in common sense and at common law. This is only to put one wrong as counterbalancing another wrong, to place the industrious workman in the fearful situation *of being oppressed by a majority of masters in order to prevent him from being oppressed by a majority of his fellow workmen.*

And, besides, here it is to be observed that the masters' combination is not limited to the duration of the suggested combination of the workmen. It is to last for twelve months absolutely; so that, of the combinations assigned as the excuse for it broke up, as they almost always do, in a short period, this restraint upon the obligors would still continue in force after the object against which it seems to have been directed had long ceased to exist.

This bond, therefore, if not altogether illegal and punishable, is framed to enforce at all events a contract by which the obligors agree to carry on their trade, *not freely as they ought to do, but in conformity to the will of others;* and this, not being for a good consideration, *is contrary to the public policy.*

We see no way of avoiding the conclusion that, if a bond of this sort between masters is capable of being enforced at law, an agreement to the same effect amongst workmen must be equally legal and enforceable; and so we shall be giving a legal effect to combinations of workmen for the purpose of raising wages, and make their strikes

capable of being enforced at law. We think the legislature has been contented to make such strikes not punishable; and certainly they never contemplated them as being the subject of enforcement by a suit at law, on the part of the body of delegates against any workmen who might have been seduced by some designing person to sign an engagement with penalty to continue in these strikes as long as a majority were for holding out.

We think for these reasons that the judgment of the court of Queen's Bench is right and ought to be affirmed."

We find some very valuable reasoning in the opinion of the Court of Queen's Bench; on page 64 we find the following:

"When I look at this bond, I have no hesitation in concluding that the association which it establishes ought not to be permitted, and that the enforcing of the bond will produce public mischief."

Page 54:

"One of the most objectionable parts of this bond is that it takes away the freedom of action of the individual to carry on the trade, and to open and close his works according as it may be for his interest or that of the public. It appears to me obviously mischievous that the parties should give up this right of judging for themselves, and place themselves and their trades under the dictation either of a majority or of a combination of delegates, which seems the same in principle."

Page 55:

"yet that the giving up their individual right of action for themselves in matters so greatly affecting the public is mischievous and dangerous in the

> extreme. I think it not to be endured that majorities and delegates, of workmen or masters, should in effect be allowed to legislate upon questions immediately affecting the happiness of the working classes and the prosperity of the trade and commerce of the whole nation."

In the recent case of

Polk et al. v. Cleveland Ry. Co., 151 N. E. 808,

decided by the Court of Appeals of Ohio, April 4th, 1925, the street railway company of Cleveland had entered into a contract to employ none but union labor. The Court says on page 810:

> "Contracts by which an employer agrees to employ only union labor are contrary to public policy when they take in an entire industry of any considerable proportion in a community so that they operate generally in that community to prevent or seriously deter craftsmen from working at their craft or workmen from obtaining employment under favorable conditions without joining a union. And such was the contract here, and it must necessarily be held in conflict with the policy of our law and illegal and void. The universal trend of authorities supports this position."

We respectfully submit that the principles there expressed are applicable here. A whole industry is affected. That is against public policy, and it would seem that anything that is against public policy must be considered a complete restraint, and thus within the anti-trust laws.

In the case at bar, Congress has legislated, decided what should be done, that did not appear in the above case, still that combination was held in restraint of

trade, against public policy and unlawful. Respondents' combination is even more so, as there is no possible excuse for taking matters away from Congress, where the Constitution places them. Congress is open to respondents if they desire any changes in or additions to the law.

The above case being in restraint of trade under the English law, if our law is the same, as it is, respondents' combination must also be in restraint of trade, as there is little difference in the facts of the two cases, the facts in this case being, if anything, more aggravated than in the *Hilton Eckersley* case. Our statute law, in so far as applicable, is as follows:

Act of July 2nd, 1890, ch. 647; 26 Stat. 209 (Sherman Act)

Sec. 1:

"Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person, who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Sec. 2:

"Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction there-

of, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The facts in the complaint show respondents have a monopoly, and we do not think it will be denied by them. It is said in

U. S. v. Whiting, 212 Fed. 466:

"A 'monopoly', both at common law and under this statute, implies, I think, the control of goods or service which the public desires to obtain."

A rule of a labor organization was held to be a violation of the above sections in

Waterhouse v. Comer, 55 Fed. 149.

And combinations of labor organizations have been held within its terms in

U. S. v. Debs, 64 Fed. 724;

U. S. v. Elliott, 64 Fed. 27;

Thomas v. Cincinnati R. Co., 62 Fed. 803;

In re Grand Jury, 62 Fed. 840;

U. S. v. Workingmen's Amalgamated Council, 54 Fed. 994;

Bittner v. West Virginia Pittsburg Coal Co., 214 Fed. 22;

Lawlor v. Loewe, 235 U. S. 255.

Sec. 3:

"Every contract, combination in form of trust, or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states, or the District

of Columbia, or with foreign nations or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both said punishments in the discretion of the court."

Section 4 provides for injunctive relief at the instance of the United States.

Section 7, page 210:

"Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit including a reasonable attorney's fee."

Sec. 8:

"The word 'person' or 'persons', wherever used in this act, shall be deemed to include corporations and associations, existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country."

Dowd v. United Mine Workers of America, 235 Fed. 1.

What is called the "Clayton Act" was passed October 15th, 1914, 38 Stat. at Large, ch. 323, to supple-

ment the Sherman Act, and on page 737 we find the following:

> "Sec. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including sections 2, 3, 7 and 8 of this act, when and under the same conditions and principles an injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity under the rules governing such proceedings, and upon the execution of proper bonds against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damages immediate, a preliminary injunction may issue: *provided,* that nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate Commerce, approved February 4th, 1887, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

Sec. 4 of that Act, 38 Stat. 731, reads:

> "That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any District Court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee."

It will be seen that under Sec. 16, above quoted, any private person may sue in any United States

Court having jurisdiction of the parties; that is the only test, the amount is immaterial; as to damages Sec. 4 above quoted reads the same as Section 7 of the Sherman Act, and the amount involved is immaterial, both sections reading:

"without respect to the amount in controversy".

The desire of Congress to enforce the anti-trust laws as to ships is shown in the Panama Canal Act of August 12th, 1912, 37 Stat., ch. 390, page 567, as follows:

> "No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if said ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the Acts of Congress, approved July 2nd, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act of Congress, approved August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the government, and for other purposes,' or the provisions of any other Act of Congress, amended or supplementing the said Acts of July second, eighteen hundred and ninety, commonly known as the Sherman Anti-Trust Act, and the amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owner or operators of said ship are parties. Suit may be brought by any shipper or the Attorney General of the United States." * * *

We respectfully submit that respondents are operating a monopoly inhibited by the anti-trust laws of the United States, and such a monopoly as would have been void at common law, and it must not be overlooked that this Court held in

The Passenger cases, 7 Howard, 232, 407,

"The officers and crew of the vessel are as much the instruments of commerce as the ship * * *."

All carriage commerce is effected through the men, the animate, and the vessels or cars, the inanimate parts; if the whole of one, the animate part, is restrained or impeded, it would seem that the whole of commerce is restrained or impeded just as much as if the vessels, the whole of the inanimate part was restrained or impeded, as an interference with the whole of one of the essential parts, is necessarily an interference with the whole scheme.

And if the taking of turns, or equality of opportunity puts the man possessed of superior qualifications on the same plane as one of inferior qualifications, as it does, then there is no incentive to possess superior qualifications, or advance in the calling, and the whole economic scheme is bound to retrogress in skill and ability. Competition is essential to advancement, and advancement in skill and ability is peculiarly necessary in ocean commerce as the safety of life and property at sea depend upon it, and the destruction of the freedom of contract of one part of commerce is an interference with the whole thereof.

III.

THE PURPOSES OF THE UNITED STATES CONSTITUTION ARE UNIFORMITY AND WHEN CONGRESS HAS ACTED, SUCH ACTION IS EXCLUSIVE.

One of the purposes of the United States Constitution was to establish uniformity and stop the endless confusion that existed by reason of the several states undertaking to operate separately, to establish uniformity in matters relating to commerce the several states delegated to Congress the power, among other things:

> "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
>
> Section 8, Article I, of the United States Constitution.

There is no more important section in the Constitution. A nation's prosperity largely depends upon its commerce. The importance of commerce to this nation is well established by the fact, that although this country is continually arguing against foreign entanglements, it has been drawn into three European wars since its origin for the sole purpose of protecting its right to navigate the seas and thus extend its commerce and develop its sea power.

It is proper that such an important matter should be left where the Constitution places it, and that the Acts of Congress in such behalf should be exclusive, otherwise the very uniformity that the Constitution was framed for would be destroyed. Congress hears both sides of any question, deliberates and then expresses its judgment in what becomes statutory law,

all for the purpose in so far as this case is concerned, as this Court properly said in the seaman's case of

Patterson v. Bark Eudora, 190 U. S. 168, 182:

> "Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions *for the purpose of securing the full and safe carrying on of commerce on the water.*
>
> Being so subject, whenever the contract is for employment in commerce not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, *which is charged with the duty of protecting foreign and interstate commerce.*"

It is always best, and it is the law, that any and all matters should be left where the law places them. Uniformity would be impossible otherwise, and when the law places a power in Congress, as this Court properly has always said, there can be no divided authority, its last expression of opinion on that subject being found in the recent case of

Missouri Pacific Railway Co. v. Stroud, 267 U. S. 404, 408,

as follows:

> "It is elementary and well settled that there can be no divided authority over interstate commerce, and that the Acts of Congress on that subject are supreme and exclusive."

There is no distinction as to who attempts divided authority. This Court said in

Loewe v. Lawlor, 208 U. S. 303, 304:

> "If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary

> associations of individuals within the limits of that state has a power which the state itself does not possess."

It follows, that if respondents are undertaking to do things that Congress has legislated upon, they are dividing authority with Congress and within the inhibitions above stated, and we will shortly show that they are.

The presumption is, that Congress has performed its duties in the above premises and done all that is necessary to do. We will show that the statutes show, as fact, that it has.

IV.

RESPONDENTS ARE DIVIDING AUTHORITY WITH CONGRESS.

In 1872 Congress took the British Merchant Shipping Act, which, coming from a maritime nation with the experience of Great Britain, must necessarily be considered as being very complete, and it was adopted as the law of this country under what is known as the Shipping Commissioners Act. There is but little change in language between the two acts, the principal ones being in the titles of the officers charged with carrying out their provisions.

The purpose of Congress in adopting laws relating to seamen was, as the Court has said and we have already shown,

> "of securing the full and safe carrying on of commerce on the water, * * * protecting foreign and interstate commerce."

The purpose of Great Britain in enacting such laws is expressed in

McLachlan's Law of Merchant Shipping, 6th Ed. pages 157, 158,

where, speaking of seamen, we find (p. 157):

> "This meritorious class of His Majesty's subjects, so essential to the power and prosperity of this country, long have been favored subjects with the British Parliament, and still in every later enactment alike their merits and their need continues to be acknowledged: by the accumulation of guarding and protecting in addition to those with which they were already surrounded." * * *
>
> "By the existing statute the use of authorized shipping masters introduced by the 8 & 9 Vict., c. 116, is continued for the purpose of facilitating the engagement and discharge of seamen, furthering in every reasonable way their interests and the honest intention of owners and masters, and of standing between dishonest designs and their accomplishments on either side." * * *

Section 277 of the Third Edition of Benedict's Admiralty says as follows, on the same subject:

> "The ship being finished and furnished, her first want is a ship's company to navigate her. Without their strength, and knowledge, and skill, and intrepidity, she must rot at the wharf, or be hurried to destruction. The ship, that by the agency of the most uncertain, capricious, and powerful element, moves with certainty and a security only surpassed by the beauty of her appearance and the grace of her motion, when under the control of a well appointed crew, becomes, in the hands of unpracticed landsmen, the victim of the first peril, and their efforts only urge her the sooner to destruction. The service of the ship's company is, therefore, the maritime

service which is entitled to the highest consideration and the greatest favor; * * *."

We will now call the Court's attention to what Congress has done:

Revised Statutes, Sec. 4507; 29 Stat. at large, C. 389, page 687:

"The Secretary of the Treasury (now Secretary of Commerce) shall assign in public buildings or otherwise suitable offices and rooms for the shipment and discharge of seamen, to be known as Shipping Commissioner's offices, and shall procure furniture, stationery, printing, and other requisites for the transaction of the business of such offices."

The complaint shows that respondents have offices for the same purpose, as follows (R. 5):

"* * * and to that end they established and now maintain offices in San Francisco and San Pedro in the State of California, at which offices almost all seamen who are employed on vessels engaged in the trade and commerce aforesaid are engaged and/or supplied by the defendants to the operators of such vessels so engaged in the trade and commerce aforesaid, the offices of the defendants in said San Francisco being located at number 330 Battery Street therein."

What the law says the Shipping Commissioner shall do in his office, and what the defendants actually do in theirs, is as follows (Section 4508 of the Revised Statutes):

"The general duties of a shipping commissioner shall be:

First. To afford facilities for engaging seamen by *keeping a register of their names* and characters."

First taking up the question of registration, respondents claim the right to do exactly the same thing in their offices, as follows (R. 6):

> "And no person will be employed by these associations unless he is *registered at their employment offices* * * *."

(R. 7):

> "To Seamen.
>
> "When you receive this book you will be given *a registered* number which will be placed in the book * * *. This *registration* number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

Registration is thus required at both offices which of itself is a burden, hence a restraint.

The purpose of registration in the Shipping Commissioner's office, is, as the statute reads:

> "To afford facilities for engaging seamen by keeping a register of their names * * *."

That seems to be solely for the benefit of commerce; that is, to have a list of names available for the operators of vessels.

One purpose of the registration in respondents' office is shown by the language requiring the registration, as follows (R. 7):

> "* * * When you leave your ship you must report to the Employment Service Bureau and get a new registered number. This registration number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

It is apparent that requirement is to force turns for employment, and Paragraph VIII of the complaint (R. 5) reads:

> "That as a condition of being employed in such trade and commerce on vessels flying the American Flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number * * *."

That must be taken as true upon exceptions, and it is true in fact. If Congress, that is charged with the duty of protecting interstate and foreign commerce, and also securing the full and safe carrying on of commerce on the water had ever thought such rules were necessary, it would have so enacted. The fact that it has not, shows they are unnecessary. Being unnecessary, the presumption is the rules must be prejudicial to commerce, as any addition to what Congress has deemed necessary must be presumed to be prejudicial, and particularly when the additions are made by an unauthorized body. The public is interested in the carrying on of commerce by sea, and it cannot be that private persons can have the right to make regulations concerning it. The uniformity that the Constitution endeavors to secure would be destroyed if they could, and it is not only always best, but imperative to allow such matters to remain where the law has placed them. And regulations made by others must be considered as made without any good end in view.

We inherited our system of laws from England, and it is always profitable to go to the fountain head to ascertain what they were, and always profitable

to refer to the Commentaries of Sir William Blackstone, to find what we inherited, and on page 125 of Volume 1 of Sharswood's Edition, we find the following:

> "nay, that even the laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference without any good end in view, are regulations destructive of liberty."

That must be equally so if rules and regulations, given the force of law, are made up by unauthorized individuals. We will hereafter show how the rules destroy liberties that petitioners are entitled to have protected, and now take up the following part of the first paragraph of Section 4508 of the Revised Statutes, to wit:

> "First. To afford facilities for engaging seamen by keeping a register of their * * * characters."

That is unquestionably for the benefit of commerce, and Congress has legislated thereon as follows:

Section 4290 of the Revised Statutes, requires every vessel specified to carry what is called an "Official Log Book" and all vessels in every trade can come within the provisions of the section if they elect to sign their crews before a Shipping Commissioner. Certain entries are required to be made by the master therein, one of such entries being as follows:

> "Fourth. A statement of the conduct, character, and qualifications of each of his crew; or a statement that he declines to give an opinion of such particulars."

The method of making the entries is prescribed as follows (Sec. 4291 Revised Statutes):

> "Every entry hereby required to be made in the official log-book shall be signed by the master and by the mate, or some other one of the crew, and every entry in the official log-book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein, in respect to any occurrence happening previously to the arrival of the vessel at her final port, be made more than twenty-four hours after such arrival."

Section 4292 Revised Statutes:

> "If in any case the official log-book is not kept in the manner hereby required. or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall, for each such offense, be liable to a penalty of not more than twenty-five dollars; and every person who makes, or procures to be made, or assists in making, any entry in any official log-book in respect to any occurrence happening previously to the arrival of the vessel at her final port of discharge, more than twenty-four hours after such arrival, shall, for each offense, be liable to a penalty of not more than one hundred and fifty dollars."

Section 4553 of the Revised Statutes, reads as follows:

> "Upon every discharge effected before a shipping commissioner. the master shall make and sign, in the form given in the table marked 'B', in the schedule annexed to this title, a report of the conduct, character, and qualifications of the persons discharged; or may state in such form, that he declines to give any opinion upon such

particulars, or upon any of them: and the commissioner shall keep a register of the same, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him."

The certificate of discharge is in the following form (part of Section 4612 of the Revised Statutes):

"Table B.

Certificate of Discharge.

Name and official number of ship	Port of registry	Tonnage	Description of voyage or employment	Name of seaman	Place of birth	Character	Declines to give statement of character	Capacity	Date of entry	Date of discharge	Place of discharge

I certify that the above particulars are correct, and that the above named seaman was discharged accordingly.

Dated.....day of....., eighteen hundred and.....

(Signed) .....Master

(Countersigned) .....Seaman

Given to the above named seaman in my presence this.....day of....., eighteen hundred and.....

(Signed) .....

Shipping Commissioner."

In the event that the report of the master is unfair, Congress has provided as follows (Section 4554 of the Revised Statutes):

> "Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award, shall be prima facie evidence thereof."

That prevents secret black-listing, gives a seaman a chance, is fair to both sides, and the whole system of discharge is comprehensive and as complete as human ingenuity can make it. We fail to see why any person should ask for more than is provided. No good end can be sought by doing so.

But the respondents, taking advantage of the sharp necessity of man to provide himself with necessities, have ruled as follows:

He must first get a continuous discharge book that carries a registered number.

He must then register again for his turn for employment.

When his turn comes, he then gets what is called an assignment card (R. 8) which reads:

"Assignment Card

Report to.....

Applicant must report back to the above if he does not get the job.

San Francisco.

To Captain of S. S. (name of vessel.)

Lying at (place where vessel is lying). In response to and order *we are assigning* (name of person assigned) in the capacity of (capacity here inserted).

Discharge Book No..... Registration No.....

Monthly wages .....

* * * * * * *

See other side

The other side of the card reads as follows:

"Fill out and return to this office when seaman is discharged or quits ship.

Date of entry for pay ..... Place .....

Date discharged ..... Place .....

Report ability and conduct.

Whether 'poor', 'fair', 'good' or 'very good'.

Ability .....

Cause of discharge .....

Remarks .....

Captain's signature .....

NOTICE—This card is *not* to be given to seaman but delivered or mailed direct to Employment Service Bureau."

Nothing unfairer can be thought of; the captain can write anything he pleases on the card and the seaman can not know anything about what he writes. Congress in its wisdom has decided that a seaman shall

have the right to an arbitration, and it will be noticed that the central office says "we are assigning"—selects the man itself whether the man or the employer likes it or not, and it also fixes the wages.

The foregoing card is the card "Grey in Color" referred to in the following card which the seaman also has to carry with him when respondents assign him to a vessel, to wit: a card being printed for each department, the following being for the engineer's department (R. 10):

"Engine Dept. 5000 11-8-24

To Captains or other Executive Officers.
Mr. .....
is registered in the Engine Department as .....
but he must not be employed on your ship in any capacity unless he presents an Assignment Card, *Grey in Color,* issued by us and addressed to your vessel designating the position to which we have assigned him."

Registration.
This space for number

Discharge Book
This space for number of discharge book.

Here appears citizenship or alienage.

The contract the seaman signs is set forth in full in Section 4612 of the Revised Statutes and reads in part:

> "It is agreed between the master and seamen or mariners of the ..... of which ..... is at present master, or whoever shall go as master, now bound * * * and the said crew agree to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed, the said

master agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. * * * and if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. * * *."

It would seem that in a contract in which the personal obligations are as binding as the foregoing, both of the parties should have the right to determine who the obligors shall be, particularly when, as here, there is no opportunity of severing the relation until the end of the voyage.

It will be observed that respondents select the crew, the master is personally liable for the crew's wages, and the maritime law on the subject is as follows:

Farrell v. McCrea, 1 Dallas 304, 305.

"there was no distinction, in this respect, between the mate and a common mariner, they were alike subject to the order of the master, who could equally refuse to receive either; or, when received, was equally empowered to dismiss them, for his appointment as master gave him the sole undoubted and exclusive right of choosing every seaman under him, whatever courtesy he might be inclined to show to the recommendation of those by whom he was himself employed."

Butler v. Boston Steamship Co., 130 U. S. 527, 554:

"By virtue of his office and the rules of the maritime law, the captain or master has charge of the ship, and the selection and employment of the crew, * * *"

Respondents' rules are therefore in derogation of the decisions of this Court and the general maritime law. The master being responsible for the wages of the crew and the safety of the ship and the lives of everyone on board, he should have the common right of selecting his own crew.

There is also required to be written on the continuous discharge book regarding the seaman, "his place of birth, his age, his date of birth, his height, his weight, the color of his hair, the color of his eyes, his complexion, his rating, the total years of his sea experience, his previous employers," and his photograph is also required but not insisted on (R. 10-11).

Respondents are certainly dividing authority with Congress in the foregoing matters where they have kept within the same requirements, where they have added to such requirements, they have passed over into a realm they had no right to pass over to, as regulations of commerce, such as respondents' rules are, are within the exclusive jurisdiction of Congress, and it was the intention of Congress to and it did make its rules exclusive. Respondents are doing some of the things the law requires the Shipping Commissioner to do, as follows:

Section 4504, Revised Statutes.

> "Any person other than a commissioner under this Title, who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. Nothing in this Title however shall prevent the owner, or consignee, or master of any vessel ex-

cept vessels bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the republic of Mexico, and vessels of the burden of seventy-five tons or upwards bound from a port on the Atlantic to a port on the Pacific or vice versa, from performing himself so far as his vessel is concerned the duties of shipping commissioner under this Title. Whenever the master of any vessel shall engage his crew, or any part of the same in any collection district where no shipping commissioner shall have been appointed, he may perform for himself the duties of such commissioner."

There is a direct inhibition there from anyone performing any duty relating to a ship in so far as seamen are concerned, excepting only a Shipping Commissioner, a consignee or a master as to their own vessels, no stranger can, and the respondents are strangers.

Section 4515 of the Revised Statutes also prohibits what respondents are doing, as follows:

> "If any master, mate or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant vessel, any seaman who has been engaged or supplied contrary to the provisions of this Title the vessel on board of which such seaman shall be found, shall, for every such seaman, be liable to a penalty of not more than two hundred dollars."

The purpose of the law is for a Shipping Commissioner to "afford facilities for engaging seamen", "To provide means for securing the presence on board at the proper times of men so engaged." He has an

office and it is supposed that men will go there and sit around and masters will go and see the men and that they will bargain between themselves. The Shipping Commissioner brings them together, and supplies the men in that way, to supply them otherwise is unlawful; that is how it is done under the same law in British countries, all to prevent crimping and see that vessels are supplied. Respondents however are supplying all of the men for all of the vessels on the Pacific Coast in direct violation of the law; their hereinbefore quoted literature shows that and it is so alleged in the complaint (R. 5), all in violation of the above laws.

We respectfully submit that the actions of respondents are an unwarranted and unlawful interference with the rights and duties of Congress and seamen who are the subjects of such interference and unlawful acts, and that it must be presumed that such unwarranted and unlawful interference is prejudicial to the public service respondents are engaged in, and requiring seamen to do more than the law requires of them in order to obtain necessities of life in their chosen calling, such acts are a violation of their absolute rights as individuals as defined by law. The fact that the respondents' rules operate only on seamen makes no difference, as is well said in Section 277 of the Third Edition of Benedict's Admiralty.

V.

PETITIONER AS AN ALIEN CAN MAINTAIN THIS ACTION.

Plaintiff alleges (R. 2) that he declared his intentions to become a citizen of the United States more than four years ago, and has been employed for more than twenty years as a seaman, sailor, on American vessels, and Section Eighth of the Naturalization Act of May 9th, 1918 (40 Stat. C. 389, p. 544):

> "Eighth. That every seaman, being an alien shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after filing his declaration of intention to become such citizen; * * *"

The anti-trust laws also apply to aliens.

VI.

PETITIONER'S RIGHT TO A FREE MARKET FOR HIS LABOR IS INTERFERED WITH BY THE RESPONDENTS.

Every person has a right to a free market for his labor.

> *Hundley v. Louisville & Nashville R. Co.,* 105 Ky. 164-165.
>
> "Every person *sui juris* is entitled to pursue any lawful occupation, or calling. It is a part of his civil rights to do so. He is as much entitled

to pursue his trade, occupation, or calling and be protected in it as is the citizen in his life, liberty and property."

We concede that respondents and each of its members have an equal right with petitioner. No one of respondents or their members could be compelled without these rules to hire or employ any person. The rules compel them to, however. No one of respondents could be compelled in the absence of such rules to hire Cornelius Anderson, the petitioner, but no one of the respondents or their members have any right to have anything to say about how or in what manner said Anderson should be employed by any other respondent or any other member. When they do so, as they do herein, petitioner's rights are invaded, and he has a cause of action.

This Court said in

Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600,

"An act harmless when done by one may become a public wrong when done by many acting in concert, for *it then takes on the form of conspiracy* and may be prohibited or punished, if the result be hurtful to the public *or to the individual against whom the concerted action be directed.*"

In this case appellees have combined together in the matter of hiring their men, necessarily one member of appellees surrenders his right to select a particular man, and surrenders his will in all the matters relating to the hiring of seamen to the will of the majority. *That has uniformly been held to be*

against public policy, as, if permitted, it would only be a question of time when such combination would be able to promulgate rules that would reduce workingmen to a condition of peonage.

Any man who can not earn a living at his calling except by obeying rules and regulations of an illegal body, is deprived of his property right to earn a living without due process of law.

Curran v. Galen, 152 New York 33, 37.

"Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and *through contracts or arrangements with employers* to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions. The effectuation of such a purpose would conflict with the principles of public policy, which prohibits monopolies and exclusive privileges. *It would tend to deprive the public of the services of men in useful employments and capacities.* It would, to use the language of Mr. Justice Barrett in People ex rel. Gill v. Smith (5 N. Y. Cr. Rep. at p. 513), *'impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages, or the maintenance of the rate.'*

Every citizen is deeply interested in the strict maintenance of *the constitutional right freely to pursue a lawful avocation* under conditions equal to all, and to enjoy the fruits of his labor, *without the imposition of any conditions not required for the general welfare of the community."*

Plant v. Wood, 176 Mass. 492-498.

"Everyone has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; *but he has a right to be free from malicious and wanton interference, disturbance or annoyance.* If disturbance or loss * * * come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands on a different footing."

There is no difference in principle between this case and that of *The Mogul Steamship Company, Limited, v. McGregor et al.,* 23 Queen's Bench (1889) 598.

In that case several steamship companies had combined together to control the carrying trade of tea from Hankow and Shanghai to England. The Mogul Steamship Company was refused admittance into the agreement, and thereupon sent two steamers to Hankow in order to obtain freights independently; thereupon the combination lowered freight rates to such a figure that it was impossible to carry at a profit, for the purpose of forcing plaintiff out of that business. The question of the right of plaintiff in that case to use their steamers in business was the question involved, and the learned Court, speaking through the very able and distinguished Lord Esher, says as follows:

Page 603.

"It seems to me well to consider first what view the law takes of the agreement of April 7, 1884, renewed or enlarged in 1885. In Hilton v. Eckersley (4) a bond was executed by certain masters, by which they agreed to be bound to each other

in a penalty, nominally payable to one of them, if any of them should carry on his works, in regard to amount of wages to be paid to persons employed therein, and as to the times or periods of the engagement of workpeople and the hours of work otherwise than in conformity with the resolutions of the majority of the said masters. The defendant, one of the signing masters, carried on his works contrary to a resolution of the others, whereupon he was sued on the bond for the penalty. Crompton, J., said: 'I am of the opinion that the bond is void, as being against public policy. I think that combinations like that disclosed in the pleadings in this case were illegal and indictable at common law, as tending directly to impede with the free course of trade and manufacture'."

The combination of defendants in this case is squarely within what was there declared was against public policy. In the Court of Exchequer Chamber, Lord Alderson said, quoted on the above mentioned page of 23 Queen's Bench Division,

"that the fact of the combination of masters being formed to counteract a combination of workmen cannot render the master's combination legal."

Page 605.

"But before considering that point it must be observed that the agreements held to be illegal because in restraint of trade must have been so held, not because there was any wrong done to the traders who agreed,—for they all agreed to what was done—but because there was a wrong to the public. The restraining themselves from a free course of trade was held to be wrong to the public. If that be so when parties agreed to restrain themselves, it must be much more so when they agree to do acts which will restrain

> and are intended to restrain another trader from a free course of trade. That restraint is equally a wrong to the public. The present agreement is therefore illegal and void as in restraint of trade on that ground also."

In the case at bar, the combination of the different employers means that no one shall have the right to select his own employees; he must take them by the numbers as the men apply; there is a restraint on the employer in this case and necessarily a restraint upon the employee. On page 607, 23 Queen's Bench (1889), Lord Esher further proceeds:

> "At common law," says Sir W. Erle (page 6), "every person has individually, and the public also have collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." "Every person has a right under the law, as between him and his fellow-subjects *to full freedom in disposing of his own labour* or his own capital *according to his own will.* It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the actor's own right, but for the purpose of obstruction—could, if damage should be caused thereby to the party obstructed, be a violation of this prohibition; and the violation of this prohibition by a single person is a wrong, to be remedied either by action or indictment, as the case may be. It is equally a wrong whether it be done by one or many—subject to this observation, that a combination of many to do a wrong, in a matter where the public has an interest, is a substantive offense of conspiracy."

The appeal was not allowed in that case, but the principles announced in Lord Esher's opinion are unquestionably the law as the following will show.

Erdman v. Mitchell, 207 Pa. St. 79,

"The right to the free use of his hands is the workman's property, as much as the rich man's right to the undisturbed income from his factory, houses and lands. By his works he earns present subsistence for himself and family. His savings may result in accumulations which will make him as rich in houses and lands as his employer. This right of acquiring property is an inherent indefeasible right of the workman. To exercise it, he must have the unrestricted privilege of working for such employer as he chooses, at such wages as he chooses to accept. This is one of the rights guaranteed him by our Declaration of Rights. It is a right of which the legislature cannot deprive him, one which the law of no trades union can take away from him, and one which it is the bounded duty of the courts to protect."

Berry v. Donovan, 188 Mass. 353, 355-366,

"The right to dispose of one's labor, as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can be lawfully interfered with only by one acting in the exercise of an equal or superior right which comes in conflict with the other. An interference with such a right, without lawful justification, is malicious at law even if it is from good motives and without express malice."

Jones v. Leslie, 61 Wash. 107, 110,

"It would be well to remember, in the beginning, that it is fundamental that a man has a

right to be protected in his property. This was the doctrine of the common law; is, and always has been the law in every civilized nation. It is, of necessity, one of the fundamental principles of government, the protection of property being largely one of the objects of government. For the protection of life, liberty, and property, men have yielded up their natural rights and established governments. Is, then, the right of employment in a laboring man property? That it is, we think cannot be questioned. The property of the capitalist is his gold and silver, his bonds, credit, etc., for in these he makes his living. For the same reason, the property of the merchant is his goods. And every man's trade or profession is his property, because it is his means of livelihood; because, through its agency he maintains himself and family, and is enabled to add his share towards the expenses of maintaining the government. Can it be said, with any degree of sense or justice, that the property which a man has in his labor, which is the foundation of all property and which is the only capital of so large a majority of the citizens of our country, is not property; or, at least, not that character of property which can demand the boon of protection from the government? We think not. To destroy this property, or to prevent one from contracting or exchanging it for the necessities of life, is not only an invasion on a private right, but is an injury to the public, for it tends to pauperism and crime. This relief has been granted to employers in many forms."

That is a case where an employee sued a former employer.

People v. McFarlin, 89 N. Y. Supp. 527,

"A calling, business or profession chosen to follow is property."

State v. Chapman, 55 Atlantic 94,

"Labor is property and as such merits protection. The right to make it available is next in importance to the right to life and liberty."

Slaughter House Cases, 16 Wallace 36, 127,

"The right to operate vessels and to conduct business is as much property as are the vessels themselves. All the rights which are incident to the use, enjoyment, and disposition of tangible things are property. Property is everything that has an interchangeable value." Mr. Justice Swayne in the Slaughterhouse Cases, 16 Wall. 127, L. Ed. 894, "Property may be destroyed, or its value eliminated. It is owned and kept for some useful purpose, and it has no value unless it can be used. In re Jacobs, 98 N. Y. 105."

Sailors Union of the Pacific v. Hammond Lumber Co., 156 Fed. 454;

Gleason v. Thaw, (C. C. A. 3rd Cir.) 185 Fed. 345, 347,

"Thus—man's right to labor, to carry on a lawful business, or to practice a lawful profession, may not be taken away from him *or be restricted* by any act of the state not within its police powers, *such act being considered as a deprivation of property within the constitutional inhibition, federal or state.* Such combination or conspiracy to destroy or prevent the carrying on of the business of any person within the protection of law *may be enjoined as a threatened trespass upon a property right.* * * * *The right to labor in any calling or profession in the future may be considered a property right, for the purpose of protection,* * * *. We must not allow ourselves, by a subtle verbal casuistry, to confuse a concept of the right to work or render service with the service itself when it has been rendered. *The right to render labor or service is one thing; the service itself quite a different thing.* * * *"

In

Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315,

"the court held a statute of the state prohibiting the employment of females in any factory for more than eight hours a day unconstitutional, on the ground that the right to labor and employ labor is a property right, of which the citizen cannot be deprived without due process of law."

The same was said in

Gillespie v People, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176:

"There a law making it criminal for an employer to attempt to prevent his employees from joining labor unions, or to discharge them because of their connection with labor unions, was held unconstitutional, as being in contravention of the guaranty that no person shall be deprived of life, liberty or property without due process of law."

In this case we have a combination that imposes rules that are oppressive and calculated to and do restrain the freedom of the employee, just as the state statute restrains the freedom of the employer in the cases above cited; in those cases it was a statute, but we will show later on, that what a state cannot do an individual or combination of individuals cannot.

VII.

PETITIONER WAS ENTITLED TO INJUNCTIVE RELIEF.

Petitioner has a right to engage in interstate and foreign commerce solely under the provisions of the Shipping Commissioners Act, and petitioner having a

property right in his right to labor, an unauthorized restriction thereon is a taking of his property without due process of law, he being engaged in interstate and foreign commerce, his rights are given by Section 16 of the Act of October 15, 1914, which reads:

> "That any *person,* firm, corporation, or *association* shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, *against threatened* loss or damage by a violation of the anti-trust laws. * * *"

The amount of the loss is immaterial under that language, Clause Fifth of Section 24 of the Judiciary Act.

Gable v. Vobbegut Shoe Mach. Co., 274 Fed. 66 (syllabus):

> "Though under the Clayton Act, Sec. 16, 19 Comp. Statutes, etc., a private party may maintain a suit to enjoin acts interfering with interstate commerce, the requirement being that the acts complained of must be immediately directed against interstate commerce."

Duplex v. Deering, 254 U. S. 443, 464,

> "The Clayton Act, in Sec. 1 includes the Sherman Act in a definition of anti-trust laws and in Sec. 16 (38 Stat. 738) *gives to private parties a right to relief by injunction in any court of the United States against threatened loss or damage by a violation of the anti-trust laws* under the conditions and principles regulating the granting of such relief by courts of equity."

Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 666,

> "What a court of equity will protect by an injunction in a proper case are the rights of the

two parties dually interested in the conflict W. A. Fletcher Company and their employes—the right of one to employ *and the right of the other to be employed; the right of both to have a free labor market where an opportunity to make a living depends.*"

Labatt on Master & Servant, 2nd Edition, Section 2691,

"An injunction may be granted against threatened interference by unlawful means with one's existing employment, *or against the commission of acts tending unlawfully to interfere with the obtaining of employment by complainant*, where there is reason to believe that continued interference is contemplated."

VIII.

THE RULES AND REGULATIONS ARE REGULATIONS OF COMMERCE, WHICH ONLY THE CONGRESS HAS THE POWER TO MAKE.

Respondents are common carriers, and it is their duty to compete in all matters relating to the business. A man has as much right to go to sea in interstate and foreign commerce as another has to run a ship therein—one cannot engage in such business without the other. This Court said in

The Lottawanna, 21 Wallace 558, 578:

"The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest part of ground covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; *the rights and duties of seamen;* the limitations of the responsibility of shipowners

for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime * * *. Ships or vessels of the United States are creatures of the legislation of Congress. * * *"

Page 573:

"Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and titles of all persons dealing therein."

The rights and duties of seamen are a matter for Congressional legislation along, it has the exclusive power to pass regulations of interstate and foreign commerce. The powers given to Congress are found in Section 8 of Art. 1 of the Constitution. Clause 3 of that section reads:

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

It has been uniformly held that that power is exclusive. Congress has the right to legislate on matters relating to seamen,

The Troop, 117 Fed. 557;

Kenney v. Blake, 125 Id. 672,

and has done so in the matters involved herein in the Shipping Commissioners' Act, with its various amendments. That act was taken almost verbatim from the British Merchant Shipping Act, in which the duties of a Shipping Master are given to the Shipping Commissioner, and the law is as follows:

When first passed the matter of regulating the shipment and discharge of merchant seamen was vested in the Circuit Courts of the United States. Its judges appointed the Shipping Commissioner, and Section 4501 of the Revised Statutes then read:

> "Such courts shall regulate the mode of conducting business in the shipping office to be established by the shipping commissioners as hereinafter provided; and shall have full and complete control over the same, subject to the provisions herein contained."

The matter was taken out of the hands of the Circuit Court in 1884 and given to the Secretary of the Treasury, then went from him to the Secretary of Commerce and Labor and from him to the Secretary of Commcree where it now is.

The following sections show that defendants are doing the very thing Congress says the Shipping Commissioner shall do, to-wit:

They have established an office for the supplying of seamen and there do what is provided for as follows; Section 4508 Revised Statutes reads:

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters.
>
> Second. To superintend their engagement and discharge, in manner prescribed by law.
>
> Third. To provide means for securing the presence on board at the proper times of men so engaged.
>
> Fourth. To facilitate the making of apprenticeships to the sea service.

Fifth. To perform such other duties relating to merchant seamen or merchant ships as are now or may hereafter be required by law."

In

Loewe v. Lawlor, 208 U. S. 303-4,

this Court said:

"It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. *If a State*, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, *can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess.*"

The right of a man to work is identical with that of the trader to do business, and there are no cases to the contrary.

Page 293:

"And that combination rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, *or restricts, in that regard, the liberty of a trader to engage in business.*"

In

Thomsen v. Cayser, 243 U. S. 66,

this Court says on page 85:

"The defendants were common carriers and it was their duty *to compete, not combine;* and

> their duty takes from them palliation, subjects them in a special sense to the policy of the law."

On page 87:

> "And it is established that the conduct of property embarked in the public service is subject to the policy of the law."

That was a steamship case where steamship companies had combined to fix freight rates.

In the case of *Wilson v. New*, 243 U. S. 332, in which case the Adamson Law, regulating wages, overtime, hours of labor, etc., on railroads came before the Supreme Court, the Court speaking of the powers of Congress on such subjects says on page 349:

> "Equally certain is it that the power has been exercised so as to deal not only with the carrier, but with its servants and to regulate the relation of such servants not only with their employers but between themselves. * * *"

Page 364. Concurring opinion of Mr. Justice McKenna:

> "I speak only of intention; of the power I have no doubt. When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

Petitioner and those on whose behalf he sues have chosen the sea as a calling, other men have established

ship-chandleries where ship outfits are sold, others operate tugboats to move vessels around, others have groceries and butcher shops that sell to none but vessels. Suppose these same defendants should establish a rule that each of the foregoing must register their names in their office and take their turn for a sale of goods or for the use of a tow-boat, that would be held a restraint on their right to do business; or supposing they should combine and tell all shippers they must register their names and take their turn as to vessels without any choice as to the vessel, that would be held to be a restraint.

The same rule must apply to persons, without whom vessels can not operate at all—their crews. If the whole of the employers in a line of business can combine and make regulations to suit themselves, all can do it, and it would only be a question of time when all persons who work for others would be reduced to a condition of peonage.

Respondents in this case cannot complain about the regulations established by Congress.

In the case of *Patterson v. Bark Eudora*, 190 U. S. 169, the section prohibiting the payment of advance wages to seamen on foreign vessels, when such seamen were shipped in the United States, came before the Court and the question of the invasion of the liberty of contract was raised, just as defendants raise it in this case, and we respectfully quote the following language from that decision:

> "'From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to certain extent, the

surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies of contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, "to rot in her neglected brine". Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and in some cases, the safety of the ship itself. *Hence the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.*

'If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation.

Neither do we think there is any trespass on the rights of the States. No question is before

us as to the applicability of the statute to contracts of sailors for services wholly within the State.' "

IX.

PETITIONER HAD A RIGHT TO BRING A CLASS SUIT.

Equity Rule 38;
Beatty v. Kurtz, 2 Peters 563, 583-4;
Callon v. Hope, 75 Fed. 758;
Duplex v. Deering, 254 U. S. 443;
Gieske v. Anderson, 77 Cal. 247;
Wheelock v. First Presbyterian Church, 119 Id. 477;
Florence v. Helms, 136 Id. 613.

X.

THE EFFECT OF THE RULES AND REGULATIONS OF RESPONDENTS.

The taking of turns for employment, that is only obtaining employment by number, is destructive of competition not only as to the employee but also as to the employer, neither has any right of selection, and that would eventually lessen the standard of efficiency, as an inefficient workman would stand just as much chance of employment as a skilled one, and there would be no incentive to acquire skill.

The rules again say that no employment would be obtained by any one who failed to obey them; that is in effect a blacklist.

In the case of

Gompers v. Bucks Stove & Range Company, 221 U. S. 418,

this Court says:

> "In Loewe v. Lawlor, 208 U. S. 274, the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which among other things, did include the circulation of advertisements. But the principle advanced by the Court was general. It covered any illegal means by which interstate commerce is restrained, *whether by unlawful combinations of capital, or unlawful combinations of labor;* and we think also whether the restraint be occasioned *by* unlawful contracts, trusts, pooling arrangements, *blacklists*, boycotts, *coercion, threats, intimidation* and whether they be made effective, in whole or in part, by acts, words or printed matter."

The above being quoted from *In re Debs*, 158 U. S. 564.

The complaint clearly shows that defendants require a seaman to register and carry a book before he can obtain employment, and plaintiff alleges he cannot obtain work unless he does so. Such requirements are necessarily the obtaining of permission to work, the obtaining of permission from the whole body before he can work for one, and the whole body, irrespective of interference with interstate and foreign commerce, legally have no right to specify the requirements under which a seaman shall work for one of their members.

That the continuous discharge system can be used and has been used for blacklisting purposes is best evidenced by the fact that the Lake Carriers' Association had a similar system, a report on which is to be found in Pamphlet Whole Number 235, issued by the

U. S. Department of Labor Bureau Statistics in 1918, under the title "Employment System of the Lake Carriers' Association". An investigation of the system was ordered by the Bureau and the conclusions of the investigator were as follows, pages 31 and 32 of said report and pamphlet:

> "This evidence of the continuing dissatisfaction of the sailors with their jobs on the Lakes, in addition to the evidence herewith submitted showing the existence of a system of practically compulsory registration and continuous-service records which actually operate as a black list, at the best, holds threats of the black list over the seamen, indicates pretty clearly that there is something radically wrong with the present system of labor employment on the Lakes. Many seamen are bitterly antagonistic to this 'welfare-plan' shipping system. This opposition is partly due to the fact that, apart from its merits or demerits, they feel that it is a system imposed upon them—a plan in the operation of which they have no part. They consider it undemocratic and feel that it seriously infringes upon their freedom of action and upon their right to organize among themselves for the betterment of the conditions upon which they work."

Matters became so serious on the Lakes owing to the discharge book system which was practically about the same as the book in this case as shown by the report, excepting that on the Lakes, the carriers always denied that seamen were compelled to go to their offices to get work, and in this case the appellees flatly say in effect he must go there or he cannot get work, and the complaint alleges he must go there; that finally the United States Shipping Board appointed ex-Governor Bass of New Hampshire to in-

vestigate, and upon the coming in of his investigation decided as follows, page 33 of Report:

> "Upon all the evidence received this board has decided that the discharge book is undesirable and should be abolished. It is believed, however, that certain features of the discharge book system are of value both to management of the shipping industry and to the men."

There is some evidence, or statement in the report that it was decided to continue it under government supervision. However, the law provides for the same thing in the certificate of discharge.

In the Report of the United States Shipping Board on Work, Wages and Industrial Relations during the Period of the War, issued in 1919, we find the following on page 24:

> "After an investigation carried out in accordance with this promise the Shipping Board announced on November 21, 1917, that what had been known as the continuous discharge book should be abolished. In its place individual certificates of discharge might still be issued; but only special data could be given as would describe the seaman and the nature of his service, thereby eliminating the objectionable 'personal opinion' feature, or any other notation that might indicate a seaman's union activities. By this regulation it was hoped that the good features of the Lake Carriers' Welfare Plan might be saved, but that the possible use of its records as a 'blacklisting device' might be prevented. * * *
>
> With the opening of Lake navigation in the spring of 1918, it was found that the labor issues in that section were assuming a much more serious form. The Shipping Board was informed that the Lake Carriers' Association has substituted for the discharge book a 'certificate of

membership', with a pocket in it, as a container for the individual discharge certificates, and that all the papers had as before to be produced and deposited at the time of employment. It was believed by the men that the new device could be made to serve exactly the same purpose as the old."

Page 26:

"In an effort to ease this tense situation the Shipping Board had already taken up the discharge system, and during the months of June and July suggested and then directed that the discharge certificate should not be in book form or accompanied by a container, and that it should state on its face that it was the property of the man to whom it was issued. Nor was the holder of the certificate to be required to deposit it or produce it at the time of hiring. It was declared to be 'the intent of this finding that seamen should be employed solely with reference to their fitness for the work and not with reference to membership in Welfare Plan, nor with reference to affiliation with or activity in any union'."

We have already called the Court's attention to the fact, that the Shipping Commissioners' Act is copied from the British Merchant Shipping Act, the certificate of discharge is the discharge that has been used and under which the enormous British merchant fleet has been built up and operates, any innovations would seem to be clearly unnecessary, and the innovation in this case is a clear blacklisting scheme, and is unlawful as it restrains both the seamen from freely engaging in interstate and foreign commerce, and also the individual operator of a vessel who is a member of either of appellee organizations.

The language of appellees is:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

There is coercion, threats and intimidation in that language within the inhibition this Court has laid down in *Gompers v. Bucks Stove and Range Company*, above cited.

That the combination complained of herein is a combination in restraint of one of the instrumentalities of interstate and foreign commerce to freely engage therein cannot be questioned.

And no good reason can be shown why such instrumentality is not entitled to injunctive relief. Section 16 of the Clayton Act says "any person" may obtain such relief. To hold otherwise would be to put the rights of property above the rights of the man.

Supposing a seaman should accumulate sufficient in his calling to acquire a vessel and such vessel was restrained as the seamen are here, can it be possible that in the transition of the fruits of his labor over into a piece of observable property, rights attached to it that were not possessed while he was acquiring it? That a piece of property has a right superior to the individual? The right of both *acquiring* and *enjoying* property are generally conceded to be equal rights before the law.

XI.

EFFECT OF THE SHIPPING COMMISSIONER'S ACT.

There is nothing in the Shipping Commissioner's Act that compels any shipowner or master of a vessel to take any seaman the Shipping Commissioner may designate. It is simply a public employment office established to facilitate the operation of vessels, where a ship-master can go to look over the register of names and pick out those he may want, and find a crew where otherwise he might not be able to find one. England has built up her enormous merchant marine under the system, and again, the scheme is to protect both the seaman and commerce within the principles explained in *Patterson v. The Bark Eudora,* heretofore cited. Ships have run from the earliest periods of history to the present without such rules and no necessity for them at this time appears.

The following are analogous sections of the law on the subject:

R. S. Sec. 4501:

> "The Secretary of Commerce shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same; such commissioner to be termed a shipping commissioner, and may from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty. * * *"

British Merchant Shipping Act:

> "146. The Board of Trade may grant to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods,

to be upon such terms and to be revocable upon such conditions as such board thinks proper."

R. S. Sec. 4504:

"Any person other than a commissioner under this Title who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. * * *"

British Merchant Shipping Act, Sec. 147:

"(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship or some person who is bona fide the servant and in the constant employ of the owner, or a Shipping Master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied, incur a penalty not exceeding twenty pounds."

The owner cannot even do as above under our law except in the trade between the United States and the British North American Possessions, or the West India Islands, or the Republic of Mexico under R. S. 4501.

What Congress intended to do is very clear, it turned the whole matter of the supplying, engaging and discharge of seamen over to the Shipping Commissioner, defined his duties in Section 4508 of the Revised Statutes, and then enacted Sub. (3) of Section 147 of the British Merchant Shipping Act as Section 4515 of the Revised Statutes, imposing a penalty of two hundred dollars for the receipt of each seaman

on board contrary to the provisions of the Shipping Commissioner's Act.

We respectfully submit that the decision herein should be reversed.

Dated, San Francisco,
September 24, 1926.

H. W. HUTTON,
Attorney for Petitioner.